

RECORDATION NO. 7728

NOV 27 1974 - 9 05 AM

INTERSTATE COMMERCE COMMISSION

EXECUTED IN 6 COUNTERPARTS

OF WHICH THIS IS NO. 5

AGREEMENT

Dated as of November 1, 1974

between

GENERAL ELECTRIC COMPANY

and

THE CHESAPEAKE AND OHIO RAILWAY COMPANY

Covering

10 3000 H.P. Model U30B Locomotives

THIS AGREEMENT, dated as of November 1, 1974, by and between GENERAL ELECTRIC COMPANY, a New York corporation (Manufacturer), and THE CHESAPEAKE AND OHIO RAILWAY COMPANY, a Virginia corporation (C&O);

W I T N E S S E T H :

The Manufacturer and C&O heretofore entered into that certain letter agreement dated May 15, 1974, whereunder the Manufacturer agreed to construct at its plant at Erie, Pennsylvania, in accordance with its Specification 3330D, dated May 1, 1973, and to deliver to C&O and C&O agreed to accept and pay for 10 3000 H.P. Model U30B Locomotives (Locomotives), to bear C&O road numbers 8225 - 8234, inclusive. The letter agreement, together with any mutually agreed upon amendments thereto, is by reference made a part of this Agreement as fully as though expressly set forth herein.

C&O intends to finance the purchase of the Locomotives from the Manufacturer pursuant to an Equipment Trust Agreement to be dated as of January 1, 1975, but deliveries of the Locomotives are scheduled to begin on or about December 2, 1974, and C&O will not have established said financing arrangement by that time nor be in position to take such deliveries thereunder. C&O represents that such financing arrangement will be established, however, on or before March 1, 1975. C&O, in order that it may use the Locomotives pending establishment of such financing arrangement, has arranged with the Manufacturer to give it temporary custody and possession of the Locomotives upon their completion, solely as a bailee of the Locomotives, and the Manufacturer is willing to do so upon the terms and conditions hereinafter stated.

In consideration of the premises, the Manufacturer hereby delivers to C&O and C&O hereby accepts from the Manufacturer the Locomotives as of the date each of them is delivered to C&O at Russell, Kentucky, or such other point or points as may be directed by C&O, for the period ending on the earlier of March 1, 1975, or the date of establishment of said financing arrangement. On such termination date, this Agreement shall automatically be cancelled and superseded without further action by or notice to any party concerned.

After C&O's representative finds that each Locomotive upon completion has been built in accordance with the requirements of the letter agreement, he will execute and deliver to the Manufacturer at its plant a certificate of inspection certifying to that effect. Upon delivery of each Locomotive to the delivery point, C&O's representative will execute a certificate of acceptance acknowledging the receipt of delivery of such Locomotive under this Agreement. Title to the Locomotives shall remain in the Manufacturer and C&O's right and interest therein is and shall be solely that of possession, custody and use as bailee under this agreement. Transfer of title shall be effected only at the time of delivery of bill of sale. C&O, without expense to the Manufacturer, will promptly cause this Agreement to be filed with the Interstate Commerce Commission for recordation under Section 20c of the Interstate Commerce Act. In addition, C&O shall do such other acts as may be required by law, or reasonably requested by the Manufacturer, for the protection of the Manufacturer's title to and interest in the Locomotives.

C&O agrees that it will permit no liens of any kind to attach to the Locomotives; and that it will

(a) indemnify and save harmless the Manufacturer from any and all claims, expenses or liabilities of whatsoever kind, and

(b) pay any and all taxes, fines, charges and penalties that may accrue or be assessed or imposed upon the Locomotives or the Manufacturer because of the Manufacturer's ownership or because of the use, operation, management or handling of the Locomotives by C&O during the term of this Agreement. C&O's obligations contained in this paragraph shall survive the termination of this Agreement.

C&O will, at its own expense, keep and maintain the Locomotives in good order and running condition and will at its option repair or replace or promptly pay to Manufacturer the purchase price in cash of those Locomotives which may be damaged or destroyed by any cause during the term of this Agreement.

Prior to the delivery of each Locomotive to C&O under this Agreement it will be numbered with a road number as hereinbefore indicated, and there shall be plainly, distinctly, permanently and conspicuously marked upon each side of each Locomotive, in contemplation of said financing arrangement, the following legend in letters not less than one inch in height:

"CHESAPEAKE AND OHIO RAILWAY EQUIPMENT TRUST OF 1975,  
MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, TRUSTEE, OWNER, LESSOR"

C&O hereby agrees to indemnify the Manufacturer against any liability, loss or expense incurred by it as a result of the placing of the aforementioned markings on the Locomotives.

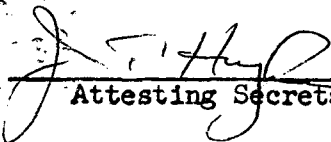
In case, during the continuance of this Agreement, such markings shall at any time be removed, defaced or destroyed on any Locomotive, C&O shall immediately cause the same to be restored or replaced.

All or any of the rights, benefits or advantages of the Manufacturer, including the right to receive the purchase price of the Locomotives as provided in the letter agreement, may be assigned by the Manufacturer and reassigned by any assignee at any time or from time to time, provided, however, that no such assignment shall subject any such assignee to any of the Manufacturer's warranties, indemnities or any other obligations contained in this Agreement or in the letter agreement relating to the Locomotives. In the event the Manufacturer assigns its rights to receive the payments herein and/or under the letter agreement, and C&O receives written notice thereof from the Manufacturer, together with a counterpart of such assignment stating the identity and the post office address of the assignee, all payments thereafter to be made by C&O under this Agreement shall, to the extent so assigned, be made to the assignee against proper receipt therefor in form satisfactory to C&O.

In the event of any assignment by the Manufacturer of its rights to receive any payments under this Agreement or under the letter agreement, the rights of such assignee to such payments as may be assigned together with any other rights hereunder which can be and are so assigned, shall not be subject to any defense, set-off, counterclaim or recoupment whatsoever arising out of any breach of any obligation of the Manufacturer in respect to the Locomotives, nor subject to any defense, set-off, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to C&O by the Manufacturer. Any and all such obligations, howsoever arising, shall be and remain enforceable by C&O, its successors and assigns only against the Manufacturer and its successors and assigns (other than assignees as such of rights, benefits or advantages assigned pursuant to this Agreement).

C&O agrees with the Manufacturer that the execution by the Manufacturer of this Agreement or the delivery by the Manufacturer to C&O of the Locomotives, as contemplated by this Agreement, shall not relieve C&O of its obligations to accept, take and pay for the Locomotives in accordance with the terms of the letter agreement, or impair any of the Manufacturer's rights under the letter agreement.

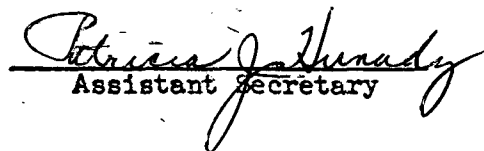
Attest:

  
Attesting Secretary

GENERAL ELECTRIC COMPANY

By   
Manager--Marketing,  
Locomotive Products Department

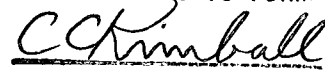
Attest:

  
Assistant Secretary

THE CHESAPEAKE AND OHIO RAILWAY COMPANY

By   
Assistant Vice-President  
and Treasurer

APPROVED AS TO FORM



GENERAL ATTORNEY

11/14/74

COMMONWEALTH OF PENNSYLVANIA)

COUNTY OF ERIE

SS:

On this 25<sup>th</sup> day of November, 1974, before me personally appeared C. S. BRESSLER, to me personally known, who, being by me duly sworn, says that he is Manager--Marketing, Locomotive Products Department, of GENERAL ELECTRIC COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

*Margaret M. Frew*

MARGARET M. FREW, Notary Public  
Erie, Erie Co., Pa.  
My Commission Expires June 7, 1976

STATE OF OHIO )

COUNTY OF CUYAHOGA )

SS:

On this 4<sup>TH</sup> day of November, 1974, before me personally appeared L. C. ROIG, JR., to me personally known, who, being by me duly sworn, says that he is Assistant Vice-President and Treasurer of THE CHESAPEAKE AND OHIO RAILWAY COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

*Clara Masuga*

CLARA MASUGA  
Notary Public, Cuyahoga County, Ohio  
My Commission Expires April 21, 1979